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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ATTACHMATE CORPORATION, a
Washington corporation,

Plaintiff,

v.

THE PUBLIC HEALTH TRUST OF MIAMI-
DADE COUNTY FLORIDA d/b/a JACKSON
MEMORIAL HOSPITAL, a Florida
corporation,

Defendant.

Case No.

CV9 1180 JLR

COMPLAINT

JURY DEMAND



09-CV-01180-CMP

Plaintiff Attachmate Corporation, for its Complaint, alleges as follows:

I. PARTIES

1. Plaintiff Attachmate Corporation is a Washington corporation with its principal place of business in Seattle, Washington.

2. Defendant The Public Health Trust of Miami-Dade County Florida d/b/a Jackson Memorial Hospital ("Jackson") is a Florida corporation with its principal place of business in Miami-Dade County, Florida.

II. JURISDICTION AND VENUE

3. This civil action arises under the Copyright Act, 17 U.S.C. § 101, *et seq.*, and Washington common law. This Court has jurisdiction over the subject matter of this Complaint

COMPLAINT

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SEA 28491 JLR

1 pursuant to 28 U.S.C. § 1331 and § 1338(a) and supplemental jurisdiction over the Washington
2 State claims under 28 U.S.C. § 1367. This Court also has jurisdiction over this case under 28
3 U.S.C. § 1332 in that there is diversity of citizenship between the parties and the amount in
4 controversy exceeds \$75,000.

5 4. This Court has jurisdiction over the Defendant pursuant to RCW 4.28.185, as
6 Defendant has committed tortious acts within this state, and this action concerns the ownership,
7 use and possession of property situated in this state.

8 5. Venue in this district is proper pursuant to 28 U.S.C. § 1391(b) & (c) and
9 § 1400(a) as a substantial part of the events giving rise to Plaintiff's claims occurred in this
10 district, and a substantial part of the property that is the subject of this action is situated in this
11 district.

12 III. FACTS

13 6. Plaintiff Attachmate Corporation, which merged with WRQ, Inc. in 2005, is a
14 leader in multi-host access, integration, security and desktop management software, serves over
15 40,000 customers in nearly 60 countries worldwide, and has been doing business since 1980.

16 7. Plaintiff has developed and distributed a variety of software products, including
17 the Reflection and EXTRA! family of products ("Attachmate Products"), and continues to
18 develop and distribute various software products.

19 8. The Attachmate Products are "terminal emulator" products. This technology
20 replaces the need for classic "dumb terminals." So-called "dumb terminals" provided a direct
21 connection to host systems, but offered no other functionality. For example, an older model of a
22 cash register would be considered a "dumb terminal" that allowed only direct payment
23 transactions, while more extensive account management functionality would be handled using a
24 personal computer ("PC") or mainframe computer.

25 9. Emulation renders "dumb terminals" unnecessary by allowing users to access
26 information on a host system from a PC. For example, the Attachmate Products can be used by
27

1 clients to allow their employees to access their host applications and perform mission critical
2 functions, such as accessing accounts payable information and manufacturing information.

3 10. Customers can license and obtain Plaintiff's software products through Plaintiff's
4 sales representatives or through authorized reseller representatives.

5 11. Plaintiff's website and the Attachmate Products themselves each feature a
6 prominent copyright notice.

7 12. Plaintiff has expended considerable effort and expense in developing and
8 promoting the Attachmate Products.

9 13. As a result of Plaintiff's extensive efforts, the Attachmate Products are valuable,
10 proprietary products.

11 14. The Attachmate Products contain material wholly original to Plaintiff and are
12 copyrightable subject matter under the Copyright Act of 1976.

13 15. Plaintiff owns, among others, the following Copyright Registrations: TX5-717-
14 997; TX6-876-712; TX6-190-286; TX5-661-367; TX5-852-645; TX5-655-388; TX5-852-651;
15 TX5-661-366; TX5-852-652; TX5-104-607; TX5-655-387; TX5-852-648; TX6-380-588; TX5-
16 661-365; TX5-852-650; and TX6-439-538.

17 16. Ownership rights to the Attachmate Products that originally belonged to WRQ,
18 Inc. were assigned from WRQ, Inc. to Attachmate Corporation in 2005. Such assignment was
19 duly recorded in the U.S. Copyright Office.

20 17. Defendant has licensed from Plaintiff the right to install desktop copies of several
21 types and versions of Attachmate Products.

22 18. Defendant was provided with paper and electronic copies of Plaintiff's applicable
23 End User License Agreement ("EULA") for each Attachmate Product. Defendant received and
24 agreed to the EULAs when it installed the Attachmate products. Representative copies of the
25 EULAs for the Attachmate Products at issue in this complaint are attached hereto as Exhibit A.

26 19. The EULAs grant the Defendant the right to install and use one copy of the
27 Attachmate Product on a single personal computer per license purchased and requires that any

1 further use or installation of the Attachmate Product may be accomplished only if the Defendant
2 has purchased a separate license for each computing device that has the ability to access or use
3 the Attachmate Product. The EULAs explicitly prohibit Defendant from making, installing or
4 using any copies of Attachmate software not specifically authorized.

5 20. The EULAs also prohibit Defendant from installing versions of the Attachmate
6 Products for which it has no license.

7 21. Some of the EULAs require Defendant to monitor installation and usage. They
8 also provide Plaintiff with the right to request an installation report from Defendant or to conduct
9 a third-party audit of the Attachmate Products installed on Defendant's systems.

10 22. Plaintiff requested, pursuant to the EULAs, that Defendant audit the Attachmate
11 Products installed on its computers and systems. Defendant provided a self-audit report to
12 Plaintiff on May 19, 2009.

13 23. The audit revealed widespread overinstallation and misuse of the following
14 Attachmate Products: EXTRA! Personal Client v. 6.50; EXTRA! Personal Client v. 6.70;
15 Reflection for UNIX and Digital v. 8.0; Reflection for UNIX and Open VMS v. 10.0; Reflection
16 for UNIX Open VMS v. 11.0; Reflection for UNIX and Open VMS v. 14.0; Reflection for IBM
17 v. 10.0; Reflection for IBM v. 11.0; Reflection for HP with NS/VT v. 10.0; Reflection for HP
18 with NS/VT v. 11.0; Reflection NFS Client v. 10.0; Reflection NFS Client v. 11.0; Reflection X
19 v. 10.0; Reflection X v. 11.0; Reflection X v. 14.0; and INFOConnect Enterprise Edition for
20 Unisys and for IBM and Open Systems v. 7.50.

21 24. Defendant has exceeded the scope of any applicable licenses from Plaintiff, and
22 has installed and used excess copies of Attachmate Products, as well as unlicensed versions of
23 Attachmate Products. In fact, the audit showed that Defendant has installed Attachmate Products
24 for which Defendant has never purchased a single license. Upon information and belief,
25 Defendant has otherwise made unauthorized reproductions and unauthorized use of Plaintiff's
26 Attachmate Products.
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25. Upon information and belief, Defendant failed to implement any controls on access and use of the Attachmate Products and failed to monitor installations.

26. Notwithstanding the unauthorized reproduction, installation, and use of Plaintiff's software products, Defendant has refused to pay license and maintenance fees to bring its use and installation of Attachmate Products into compliance with Plaintiff's license requirements and other contractual requirements.

27. Defendant's activities were taken willfully and in bad faith.

IV. CLAIMS

**FIRST CLAIM
COPYRIGHT INFRINGEMENT**

28. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

29. Plaintiff is the owner of copyrights in and to the Attachmate Products, and it is entitled to bring an action for copyright infringement pursuant to 17 U.S.C. § 101, *et seq.*

30. Defendant's installation of the Attachmate Products exceeds the scope of the EULAs and any other applicable licenses to Defendant and infringes and continues to infringe Plaintiff's exclusive rights granted by 17 U.S.C. § 106.

31. Defendant has knowingly, willfully and deliberately infringed Plaintiff's copyrights in the Attachmate Products and continues to do so.

32. Plaintiff has suffered and is continuing to suffer damages as a result of Defendant's aforesaid acts, in an amount to be proven at trial.

33. Plaintiff's remedy at law is not itself adequate to compensate Plaintiff for injuries inflicted and threatened by Defendant.

SECOND CLAIM BREACH OF EXPRESS AND IMPLIED CONTRACT

34. Plaintiff realleges and incorporates by reference the allegations contained in the paragraphs above as if fully set forth herein.

35. Defendant's licenses of Attachmate Products from Plaintiff are governed by the EULAs. The EULAs are valid, enforceable contracts.

36. The EULAs and other contractual agreements between the parties create rights based upon the parties' contractual promises and not existing under copyright law.

37. Defendant has breached and continues to breach the EULAs by installing and using unlicensed copies of the Attachmate Products.

38. Defendant has breached and continues to breach the EULAs by failing to pay Plaintiff the required license fees for all copies used, accessed or installed, as required by the EULAs.

39. Defendant additionally has breached and continues to breach its contractual agreements by failing to pay maintenance fees.

40. Defendant has breached and continues to breach the EULAs by failing to monitor or implement controls on installation and usage of the Attachmate Products.

41. As a direct and proximate result of these and other breaches of the EULAs, Plaintiff has suffered and is continuing to suffer damages, in an amount to be determined at trial.

42. Plaintiff's remedy at law is not itself adequate to compensate Plaintiff for injuries inflicted and threatened by Defendant.

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For judgment in favor of Plaintiff Attachmate Corporation and against Defendant Public Health Trust of Miami - Dade County Florida on all causes of action;

2. For a preliminary and permanent injunction
(a) enjoining and restraining Defendant, its officers, directors, agents, employees, representatives, and all persons acting in concert with them from engaging in further such acts of copyright infringement and/or breach of contract; and

1 (b) requiring Defendant to produce for deposition by Plaintiff, within twenty
2 (20) days following the Court's Order, a corporate representative to testify and be deposed on the
3 subjects of Defendant's compliance or noncompliance with its licenses with Plaintiff, including
4 without limitation Defendant's installation, de-installation, deployment, use and reproduction of
5 the Attachmate Products;

6
7 3. For an award of Plaintiff's actual damages, including but not limited to lost
8 product licensing fees and maintenance fees, and an award of all profits received, directly or
9 indirectly, by Defendant in connection with its breach of contract and each infringement pursuant
10 to the common law and/or 17 U.S.C. § 504(b);

11 4. For an award of statutory damages in the maximum amount permitted by law
12 pursuant to 17 U.S.C. § 504(c), based on Defendant's willful infringement;

13 5. For an award of Plaintiff's costs, including reasonable attorneys' fees, pursuant to
14 17 U.S.C. § 505, the EULAs or any other basis permitted by law and the equity powers of the
15 Court;

16 6. For an award of prejudgment and postjudgment interest on all applicable
17 amounts; and

18 7. That Plaintiff be awarded such other and further relief as the Court may deem
19 equitable and proper.

20 JURY DEMAND

21 Plaintiff requests a jury trial on all issues so triable.
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1 DATED this 20th day of August, 2009.

2 STOKES LAWRENCE, P.S.

3
4 By: Shelley Hall
5 Shelley M. Hall (W\$BA #28586)

6 Attorneys for Plaintiff Attachmate Corporation
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EXHIBIT A

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Attachmate INFOConnect(R) Enterprise Edition for IBM(R) and Open Systems**

1. DEFINITIONS.

- (a) "Attachmate" means Attachmate Corporation.
- (b) "SOFTWARE" means the Attachmate INFOConnect Enterprise Edition for IBM and Open Systems software programs for which you received an access code as provided in the product package.
- (c) "Client Component(s)" means the myEXTEND(TM) Enterprise, INFOConnect, INFOConnect programs and Response Utility Client Components contained in the SOFTWARE.
- (d) "Server Component(s)" means the Management and Control Services and associated plug-ins contained in the SOFTWARE.
- (e) "Device" means a personal computer or electronic communications/computing device that is used by a person, and excludes any machine that primarily provides automated, unattended communications and/or services to other applications, computers or electronic devices.

2. LICENSE GRANT.

- (a) Attachmate grants you, the end user, the right to install and use (directly or indirectly) a single copy of the Client Components on a single Device (hereafter the "Licensed Client Device"). Additionally, for the Server Components, using one installation method, **either** the installation for Microsoft(R) Windows(R) servers and desktop environments **or** the tar ball installation for Open Systems environments: (i) for the first (1st) through tenth (10th) INFOConnect Enterprise Edition for IBM and Open Systems Licenses acquired by you for this version of the SOFTWARE, you have the right to make a single copy of the Server Components for use on a single server computer; (ii) and thereafter, for every ten (10) INFOConnect Enterprise Edition for IBM and Open Systems Licenses acquired by you for this version of the SOFTWARE, you may make a single copy of the Server Components for use on a single server computer; and (iii) **provided**, only a Licensed Client Device is permitted to access and use the Server Components from the server computer(s). The Server Components may only be used in conjunction with the SOFTWARE.
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